

## **REMARKS/ARGUMENTS**

### **Information Disclosure Statement**

The Office Action indicates that the Information Disclosure Statement filed June 6, 2003 fails to comply with 37 CFR § 1.97 (c) because it lacks a statement as specified in 37 CFR § 1.97(e).

Included herewith is an Information Disclosure Statement which includes a statement as specified in 37 CFR § 1.97(e).

The Office Action further indicates that the Information Disclosure Statement filed June 6, 2003 fails to comply with 37 CFR § 1.97(c) because it lacks the fee set forth in 37 CFR § 1.17 (p). It is noted that the required fee of \$180 as set forth in 37 CFR § 1.17(p) was remitted in attorney for applicant's check number 6779 submitted with applicant's response of June 4, 2003. Thus it is believed that no further payments are due in connection with the Information Disclosure Statement.

### **Specification**

The disclosure is objected to because the description of the drawings is not consistent with the figure labeling provided in the formal drawings received June 6, 2003.

This amendment amends the specification at page 11 line 7 to refer to Figures 1A and 1B, and at line 10 to refer to Figures 2Aa, 2Ab, 2Ba and 2Bb, in order to be consistent with the new drawings submitted with the amendment filed June 6, 2003 .

### **Claim Rejections 35 USC § 112**

Claims 4 and 10 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, lines 6 and 7, the language of the parenthetical expression "award winner better than a non-award winner" has been restated in positive rather than parenthetical form.

Also in claim 4, line 9, the parenthetical expression "i.e. the award winners" has been restated in positive form.

In claim 10, the last line thereof, the word "vehicles" has been changed to products in order to provide proper antecedent basis for the term.

In view of the foregoing, it is believed that the basis for the rejection of claims 4 and 10 under 35 USC § 112 has been removed from the case, and that the rejection should be withdrawn.

**Claim Rejections 35 USC § 103**

Claims 3-5, 7-10, and 12-14 are rejected under 35 USC § 103(a) as being unpatentable over the references *First Ever*, *How Green*, and *aceee.org* in view of Official Notice and further in view of [www.bbbonline.org](http://www.bbbonline.org). This rejection is respectfully traversed.

The Examiner's rejection uses no less than five references which are strung together in piece-meal fashion to meet the limitations of applicant's claims. There is no teaching in any of the references to combine the references as the Examiner has done, and the only teaching that does exist is found in applicant's own disclosure. A rejection that is based on such a combination of unrelated prior art references is untenable, and should be withdrawn.

According to applicant's invention, the Internet is used for acquiring data concerning the vehicles. The data is used to develop ratings of the environmental sensitivity of vehicles using a predetermined rating algorithm. The ratings are communicated to customers, manufacturers, and other interested parties via the Internet. The vehicles are identified by brand and model designation as used in the marketplace by manufacturers and consumers. Awards are presented in recognition of top rated vehicles measured according to environmental sensitivity based on the algorithm. The rating system and identification of award winners is communicated to consumers and manufacturers using the generally accepted brand and model designation of the individual vehicles. No such device is shown by the prior art.

There are two fundamental differences between what is taught and disclosed by the prior art references of *First Ever*, *How Green*, and *aceee.org* and applicant's invention. The first difference is that *First Ever*, *How Green*, and *aceee.org* all use vehicle configurations rather than brand/model designations in their ratings. There are approximately 2500 vehicle configurations available for sale in the United States,

while there are 210 brand/model designations available for sale in the United States. The 210 brand/model designations for the year 2001 are shown in applicant's Figure 2, and one of the entries is the Chevrolet Cavalier. The Chevrolet Cavalier is one of the model/brand designations that the automobile companies use to market and sell vehicles, and it is a designation that consumers know and understand.

In contrast, each different combination of brand/model, body style, engine size, number of cylinders, transmission type, fuel type, emission standard, and city and highway fuel economy category is a different vehicle configuration! The numbers indicate that there are more than 10 times as many different vehicle configurations as model/brand designations. Automobile companies do not use vehicle configurations to market and sell vehicles, and consumers are not familiar with vehicle configurations as way to identify vehicles.

The second difference is that *First Ever*, *How Green*, and *aceee.org* gives a rating to all of the 2500 vehicle configurations, while according to applicant's invention, only the highest rated brand/models are AMES Award Winners.

The Examiner's rejection states that *ACEEE*'s website identifies the rating system and the identification of vehicles with the highest rating. This statement is misleading since *ACEEE*'s website identifies all of the vehicle configurations which are sold in the United States and gives all of the configurations one of five ratings which varies from Superior to Inferior. The rating itself is indicated by a Class Ranking Symbol, so a consumer using the website has to constantly refer back to a Symbol table in order to "de-code" the Symbols to know the rating for a particular vehicle configuration.

Further, *ACEEE*'s website does not identify vehicles by brand/model, but rather by vehicle configuration. As an example, the Examiner's attention is directed to the listing of sub-compact vehicles in the *ACEEE.org* reference. Two versions of the Chevrolet Metro are listed; a 1.3 liter, 4 cylinder automatic version under the designation "Automatics," and further under the designations California Certified and Federally Certified, and a 1.0 liter, 3 cylinder manual version under the designation "Manuals" and further under the designations California Certified and Federally Certified. Thus the Chevrolet Metro is listed four times in the *ACEEE.org* rating, twice in second place and twice in first place and with two different engines (i.e. in

two different configurations). As a result, the consumer is left with no clear indication of what the *ACEEE.org* list is saying with regard to the Chevrolet Metro as a model and brand consumer choice.

The confusing rating system of *ACEEE.org* can be contrasted with applicant's invention as shown in Figure 3. Figure 3 clearly shows the Honda Insight included on the list of 2000 Model Year AMES Award Winners. There is no need for the consumer to determine whether or not the rating is dependent upon whether the car has an automatic or a manual transmission or whether it is certified by California or the federal government. There is no need to look at a Symbol table to "de-code" the rating. The consumer looking at the AMES chart is given one clear simple recommendation, namely that the Honda Insight is an AMES Award Winner in the sub-compact category.

Applicant's invention presents two elegant simplifications to the prior art:

1. Use a brand/model rather than a vehicle configuration designation, and,
2. Indicate the highest rated vehicles as award winners rather than providing all of the vehicles with a rating.

These two simplifications reduce the clutter and confusion of the prior art, and allow the consumer to interpret the ratings in a quick and easy way. These two simplifications are not shown or taught by the prior art, and are not obvious therefrom.

The Examiner's rejection further states that *ACEEE* facilitates the promotion of results by companies since the *How Green* article states that it is hopeful that auto makers will take the information to heart and begin marketing certain vehicles as being picked a "best bet" in the *Green Guide*. The Examiner's position is predicated on the supposition that certain vehicles are picked as a "best bet" in *How Green*. However the vehicles are not picked by brand and model designation. The vehicles are picked by vehicle configuration, i.e. by brand/model, body style, engine size, number of cylinders, transmission type, fuel type, emission standard, and city and highway fuel economy categories. Moreover, the customer then has to choose whether to follow the California certifications or the federal certifications. After a consumer does pick a certain vehicle from *How Green's* or *ACEEE's* list, the

consumer is then left to fumble through a dealers lot checking for the U.S. government "Vehicle Certification Configuration" that is identified on the emissions compliance label located under the hood in order to find the vehicle that he is looking for. This is not at all the same as applicant's invention in which a consumer looking for a sub-compact vehicle is directed by the AMES chart to the Honda Insight.

The Examiner states that *ACEEE* identifies different vehicles by brand name and model. *ACEEE* does list brand name and model in its ratings but qualifies those brand name and models with engine displacement, number of cylinders, transmission type, and other vehicle parameters. Thus, when using the *ACEEE* system the brand name and model is only a portion of the selection process, the other part being the body style, engine size, number of cylinders, transmission type, fuel type, emission standard, and city and highway fuel economy. Applicant's invention as disclosed and claimed seeks to simplify the morass of information generally available to the consumer so that the consumer is given a clear single choice.

The Examiner states that it would have been obvious to one of ordinary skill in the art to have provided the method of *ACEEE* as modified to have included the step of obtaining the quality assured data already obtained from the EPA via the Internet in order to facilitate the data procurement. There is no teaching or suggestion by either *ACEEE* or the other prior art references of obtaining data via the Internet in order to create market demand for vehicles at the brand/model level. Such teaching is provided only in applicant's own disclosure. Accordingly, Examiner's assertion that such provision would be obvious is one which is realized only through hindsight gained from applicant's own disclosure, and thus is not a proper basis on which to reject applicant's claims.

Independent claim 7 is amended herein to more clearly define and more positively recite applicant's invention.

Claim 7 is now directed to a method for creating market demand for vehicles at the brand/market level based on environmental performance data, including the steps of identifying the vehicles at the brand/model level which are more environmentally sensitive than others, and indicating one or more vehicles at the brand/model level in one or more classes of vehicles as an AMES Award Winner, whereby consumers are enabled to select and buy a vehicle at the brand/model level

that is among the top environmentally sensitive vehicles of the available vehicles, thereby promoting the sale of environmentally sensitive vehicles through market demand.

No such method is taught by the prior art.

Independent claim 9 is amended herein to more clearly define and more positively recite applicant's invention.

Claim 9 is now directed to a method for creating a market demand for products based on environmental performance data comprising identifying a class of products manufactured by a selected industry from which consumers may choose a product for purchase and for which consumers may desire to have environmental performance information, determining the generally accepted language of the industry used to identify its products to consumers in the marketplace, and presenting awards in recognition of the most environmentally sensitive products using the generally accepted language of the industry to identify the award winning products, thereby promoting the sale of environmentally sensitive products through market demand rather than through government regulation.

No such method is taught by the prior art.

In view of the foregoing, the Examiner's rejection of claims 3-5, 7-10 and 12-14 as unpatentable over the combination of five references is untenable, and should be withdrawn.

Claims 2 and 11 are rejected under 35 USC § 103(a) as being unpatentable over *First Ever*, *How Green*, and *aceee.org*, in view of Official Notice and further in view of *www.bbbonline.org* and further in view of *Fuel economy*. This rejection is respectfully traversed.

The Examiner admits that *How Green* does not specifically report that the ratings are produced at the beginning of the model year of the industry. In order to cure this defect of the *How Green* reference, the Examiner relies on *Fuel economy* which states that rankings performed by the EPA are made available to customers at dealer showrooms and on new car stickers as required by law.

However, any such combination of references is taught only by applicants own disclosure, because doing so in real life according to the prior art would result in the consumer having to combine the confusing information and ratings of *How Green*

with the equally confusing information found in the EPA standards referred to in *Fuel Economy*. The Examiner assumes that after selecting a vehicle according to brand/model, body style, engine size, number of cylinders, transmission type, fuel type, emission standard, and city and highway fuel economy in *How Green*, that the consumer will be able to find the same vehicle in the EPA standards in order to determine the actual fuel economy of that vehicle. The combination proposed by the Examiner is simply unworkable, and should not be used as a basis on which to reject applicant's claims.

*First Ever* describes a system in which every vehicle model sold in the United States is given a green score ranking. *First Ever* clearly indicates that according to their system as implemented by the *Green Guide*, the top twelve over-all greenest vehicles are indicated, and the worst twelve vehicles are indicated. Indeed, the *Green Guide to Cars and Trucks* contains green score rankings for every 1998 vehicle sold in the United States.

A look at the 1998 *Green Guide* itself shows that brand/model vehicles are not ranked, but rather individual vehicle configurations with different engine and transmission combinations are ranked. To make the rankings more complex and confusing, the rankings are broken down into cars with automatic transmissions and manual transmissions, and these are further broken down into cars which are California certified, or federally certified. Thus, a consumer using the *Green Guide* or following the ACEEE system has to wade through a large number of rankings and vehicle configurations when trying to select a green vehicle.

This is not at all what applicants have disclosed and claimed as their invention. The 2000 model year AMES Award Winners are shown in Figure 3. The Award Winners consist of a single entry indicated as Best in each vehicle class, and a number of additional entries indicated as Preferred in the majority of vehicle classes. There is no breakdown according to engine size or transmission type. There is no breakdown according to automatic or manual transmissions. There is no breakdown according to California certified vehicles and federally certified vehicles. According to applicant's invention, a potential consumer wishing to buy the Best green rated vehicle in the Full Size vehicle class is directed to a single brand/model, the Toyota Avalon.

It is noted that the Examiner states the Final Rejection in this case does not depend upon the *Green Book* publication. However, since both the *First Ever* and *How Green* references refer to and rely on the *Green Book* publication, it is impossible to ignore what the *Green Book* publication actually comprises.

The Examiner admits that ACEEE does not show granting each manufacturer of an award winning vehicle the opportunity of a license to display the award in its advertising. The Examiner dismisses this shortcoming in ACEEE and states that the opportunity of a license to display an award in advertising is obvious in view of *bbbonline.org*. Companies participating in *bbbonline* do so to demonstrate their commitment to honest advertising and customer satisfaction by agreeing to strict *bbbonline* standards.

*Bbbonline* has nothing to do with the environmental ratings of vehicles. Moreover, *bbbonline* is not an award. Any company can use the *bbbonline* seal if the company demonstrates its commitment to honest advertising and customer satisfaction by agreeing to the *bbbonline* standards. *Bbbonline* does not give an award to the company having the highest standards, rather it lists every company that meets certain threshold standards. Thus, the use of *bbbonline* by the Examiner to show that it would be obvious to include the step of granting a license to the manufacturer of an award winning vehicle is untenable and should be withdrawn.

The Examiner states that the term "market driven" provides no specificity which can be relied on to impart patentable moment necessary in obviating the combined method of the rejection.

It is noted that the claims as amended do not use the term "market driven" but rather the term creating market demand. Moreover, market demand is created for vehicles at the brand/model level based on environmental performance data. Market demand is created by listing vehicles by brand/model as AMES Award Winners in each vehicle category, whereby consumers desiring to purchase an environmentally sensitive vehicle are directed to a readily recognizable brand/model. This is not at all the same as a system in which every vehicle configuration is listed and rated using a Class Ranking Symbol as described in *First Ever* and *How Green*, and a consumer is left to wander through the numerous vehicle listings in order to choose a vehicle which suits his needs.



ACCEE shows no such steps. According to the ACCEE method, every vehicle configuration in every class is given a rating. No single vehicle is indicated as being "Best" in any vehicle class. No vehicles are indicated as being "Preferred" in any vehicle class. Applicant's invention is directed to providing to the consumer a straightforward and simple rating of vehicles in each vehicle class whereby a single brand/model is indicated as being Best and one or more additional vehicles in one or more of the classes are indicated as being Preferred.

The Examiner has indicated that there are no active method steps that serve to define the instant method from the combined method steps in the Final Rejection. However, the step of indicating one or more vehicles at the brand/model level as an award winner in each class of vehicles is neither shown, taught or rendered obvious by the references of record.

The Examiner states that the limitation "via the Internet" does not appear in applicant's claims. Claims 8 and 10 as previously submitted both state that the results of the environmental performance evaluation are provided via the Internet. This limitation has been modified to say via the Internet without charge in order to emphasize the fact that according to applicant's invention, consumers are given the environmental ratings free via the Internet.

For the reasons stated above, it is believed that the claims now appearing in this case are now in condition for allowance, and an early notice to such effect is respectfully solicited.

It is believed that this Amendment raises no new issues for the Examiner's consideration, and hence, entry of this Amendment is deemed proper.

Should the Examiner believe that a discussion with applicant's attorney would be beneficial in resolving any issues remaining in the case he is courteously invited to contact the undersigned at the number given below.

It is believed that no new fees are necessitated by the entry of this amendment. However, in the event that additional fees are required, authorization is hereby given to charge such fees to deposit account 50-0852.

Respectfully Submitted,

REISING, ETHINGTON, BARNES, KISSELLE, P.C.



Brian L. Ribando  
Registration No. 27,109  
P.O. Box 4390  
Troy, Michigan 48099  
(248) 689-3500

Date: November 26, 2003  
BLR/klb